

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL NO. 3:04CV00410**

JILL BENOIT,

Plaintiff,

vs.

**WASHTENAW MORTGAGE CO.,
INC., and H. TERRY HUTCHENS,
P.A., INDIVIDUALLY AND AS
TRUSTEE FOR WASHTENAW
MORTGAGE CO.,**

Defendants.

**ORDER OF DISMISSAL FOR FAILURE
TO PROSECUTE
FED. R. CIV. P. 41(b)**

THIS MATTER is before the Court *sua sponte* concerning Plaintiff's failure to prosecute her claim.

On August 18, 2004, the *pro se* Plaintiff Jill Benoit ("Plaintiff"), filed her Complaint against Defendant Washtenaw Mortgage Co., Inc., ("Washtenaw") alleging numerous causes of action arising out of a real estate transaction. (Doc. No. 1). On September 30, 2004, Plaintiff filed her Amended Complaint against Washtenaw and added H. Terry Hutchens, P.A., ("Hutchens") as a party. (Doc. No. 9). The Amended Complaint alleged numerous causes of action arising out of a real estate transaction.

On October 12, 2004, Washtenaw filed its Answer to the Amended Complaint and asserted several Counterclaims against Plaintiff. (Doc. No. 15). On November 3, 2004, Hutchens filed its Answer, including a Motion to Dismiss Plaintiff's Complaint. (Doc. No. 18, see also Doc. No. 20, Memorandum by Defendant Hutchens in Support of Motion to Dismiss). On March 7, 2005, Washtenaw filed a Motion for Entry of Default and for Default Judgment, and in the alternative, for

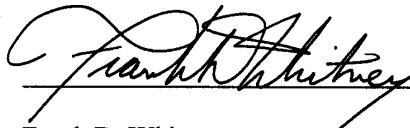
Summary Judgment. (Doc. No. 21).

Plaintiff has not filed a response to any of the Motions filed by Defendants Washtenaw and Hutchens. Plaintiff has not filed a response to either of the Motions filed by Defendant. Furthermore, an Order dated August 8, 2006, from the Court mailed to Plaintiff at her address of record was returned as undeliverable. Plaintiff has failed to keep the Court apprised of her current address. Since filing the Amended Complaint, Plaintiff has taken no further action in prosecution of her claims against Defendants.

On August 15, 2006, the Court issued an Order (Doc. No. 25) directing Plaintiff to show cause as to why this matter should not be dismissed for failure to prosecute. Plaintiff did not respond or otherwise appear in response to the August 15, 2006, Order. Thus, the Court finds that Plaintiff has failed to show cause why this case should not be dismissed for failure to prosecute.

NOW, THEREFORE, IT IS ORDERED that pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, this matter is DISMISSED WITHOUT PREJUDICE. Defendants' Motions are DISMISSED AS MOOT. The Clerk is directed to send copies of this Order to counsel for Defendants and to the pro se Plaintiff at her address of record, that is, Jill Benoit, PMB 320, 15105-D John J. Delaney Drive, Charlotte, North Carolina 28277. The Clerk is directed to close to the case.

Signed: October 11, 2006


Frank D. Whitney
United States District Judge

